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## The Special Meeting of the American Peace Society.

We call attention again to the special meeting of the American Peace Society at the New Willard Hotel, Washington, D. C., December 8, at 10 o'clock A. M. The purpose of the meeting was given in the November ADVOCATE OF PEACE.

In the evening of the same day a public mass-meeting will be held at 8 o'clock in the hall of the Pan-American Union Building. This meeting will be one of the series to be held in different cities under the auspices of the Citizens' National Committee recently organized in New York for the promotion of the ratification of the arbitration treaties. The speakers at the Washington meeting will be Senator Theodore E. Burton; Dean George W. Kirchwey, of the Columbia Law School; Senator John Sharp Williams; Hon. Richard Bartholdt, president of the Interparliamentary Group in Congress; Hon. S. Shimada, a distinguished member of the Japanese Parliament, and Hon. David J. Foster, former chairman of the House Committee on Foreign Affairs. President Taft has been invited, and expects to attend.

## Ex-Senator Edmunds Unable to Agree with the Majority of the Senate Committee on Foreign Affairs.

The following letter from Ex-Senator George F. Edmunds, of Vermont, was received early last month by Dr. James L. Tryon, secretary of the Massachusetts Peace Society, who had asked for his opinion on the constitutionality of the commission of inquiry provision of the arbitration treaties now before the Senate:

841 SOUTH ORANGE GROVE AVENUE,  
PASADENA, CAL., October 25, 1911.

DEAR SIR: Your letter of the third instant reached me about a week ago, asking my views on the subject of "The constitutionality of the clause giving to the International Commission of Inquiry the power to determine whether or not a given case is justiciable," as it appears in the draft of the treaty between Great Britain and our country now pending in the Senate, providing for arbitration.

The report of the Committee on Foreign Relations on the subject presented by Senator Lodge on August 15, which you enclosed, does not contain in full a copy of the treaty, but only quotes Article I and a part of Article III. Yesterday I received a complete copy of the proposed treaty, and am now able to answer your question definitely.

I had seen the very interesting discussion of the matter in the report of Mr. Lodge, and the minority views of Mr. Root, Mr. Cullom, and Mr. Burton, as also other discussions of the constitutional questions as they appeared in print, and had reached a general conclusion that the treaty did not invade any of the rights or limit any of the duties of the Senate, but I did not wish to

reply to your inquiry until I should see the whole text of the treaty.

The Constitution provides that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." This power of the President with (in effect) the advice and consent of two-thirds of the States of the Union is absolute, unlimited, and without qualification or reserve, except that it must not infringe upon the legislative power or the judicial power deposited by the same Constitution with Congress and the courts. No one contends that this proposed treaty makes any such infringement. A treaty, therefore, may concern questions that involve the good faith or the vital interests of the nation, as treaties about mere business relations and acts sometimes do; just as it happens between men where arbitrations or the established courts of justice settle, finally, all such disputes.

Article I of the proposed treaty limits the jurisdiction of the arbitral tribunal; either the permanent court at The Hague, or some other arbitral tribunal as the two nations may decide by special agreement made by the President, by and with the advice and consent of the Senate, and his Britannic Majesty's government; to differences arising "by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity."

The questions described in this article to be submitted to arbitration, it will be seen, are such as doubtless most nations which really favor arbitration instead of war would be willing to submit. The suggested difficulty is in determining whether a particular dispute falls within that description; in short, it is solely a question of the jurisdiction of the arbitral tribunal. If the two parties can decide this, there is little, if any, use in any pre-established tribunal at all, for if the parties agree that the subject of difference is one they would like to arbitrate they can create the tribunal for the occasion at once.

The simple *constitutional* question, then, is, Has the President, with the advice and consent of two-thirds of the Senate, the power to submit a question of the jurisdiction of a tribunal to any other authority whatever? If not, it must reside in him and the Senate alone and incommunicable.

It is certain that the clause in the Constitution quoted above contains no such limitation, either expressed or implied. The great statesmen who framed it wisely left the *whole* treaty-making power to the discretion of the President and two-thirds of the Senate. Every arbitral commission or treaty ever made does inherently submit this very question to the tribunal. The tribunal, when the hearing comes on, must first determine whether any particular claim presented is one that the tribunal was appointed to settle, and when decided it binds both parties unless by appeal to "the last reason of kings"—war.

When our last controversy with Great Britain—that of the so-called Alabama Claims—was tried by the Geneva Tribunal, she contended that our claim of compensation for the vast damage done to our commerce through her misconduct was not within the jurisdiction of the tribunal, and her contention was in some way sustained. I have no means, within reach here, of stat-